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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,065	12/05/2003	Hugo Rodriguez	206,294	9141
7590 02/07/2006 Abelman, Frayne & Schwab 666 THIRD AVENUE 10TH FLOOR New York, NY 10017			EXAMINER STASHICK, ANTHONY D	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,065

Applicant(s)

RODRIGUEZ, HUGO

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 9-11, 17-18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin 5,339,543 in view of Buchsenschuss 5,664,342. Lin '543 discloses all the limitations substantially as claimed including the following: a sole 3 having a front portion (near the toes) and a rear portion (near the arch); an insole 1 having a front portion (near the toes) and a rear portion (at the heel); the front portion of the insole is connected to the front portion of the sole (see Figure 3); the rear portion of the insole (at the heel) is spaced apart from the rear portion of the sole (that near the arch) forming a space therebetween (see Figure 3, space is longitudinal rather than vertical) ; a heel 4 directly connected to and positioned between the rear portions of the insole and the sole (see Figure 3); the heel having a height greater than the thickness of the insole (see Figure 3); the heel being composed of a substantially solid material (heel is shown as being solid except for the attachment holes, but rest of heel is solid) throughout which substantially fills the entire space between the rear portions of the insole and the sole rearward of the junction between the front portions of the insole and the sole (see Figure 3); the rear portion of the insole connected directly to and positioned upon the heel 4 (see Figure 3); the front portion of the insole is connected directly to and positioned upon the front portion of the insole (see Figure 3); a strap (2 in Figure 1 where the reference numbers 21 are located) for

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removably securing at least the insole to the foot of a wearer; a fastener N for removably attaching a portion of the strap to the insole; the sole having a front portion and a rear portion (see Figure 1); the heel positioned over the rear portion of the sole (see Figure 1); the insole positioned upon the heel and the front portion of the sole (see Figures 1 and 3-4). Lin '543 does not disclose a cushion positioned on a rear portion of the insole above the heel. Buchsenschuss '342 teaches that a cushion 3 can be placed upon and above only the heel portion of an insole to reduce impact on the heel when the foot is put down. Buchsenschuss '342 also teaches that the cushion extends along at least a portion of the peripheral edge of the insole (the peripheral edge being a margin of the insole inwards to the edge of the cushion). Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a cushion in the heel portion of the insole of Lin '543, as taught by Buchsenschuss '342, to aid in cushioning the impact of the user's heel when the shoe strikes the ground.

3. Claims 5, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 9 and 17 above in view of Santisi 2,759,284. The references as applied to claims 1,9 and 17 above disclose all the limitations of the claims except for the material of the heel being plastic. Santisi '284 teaches that the heel of a sandal can be made of plastic to make it lighter in weight and to allow for it to be see-through for display purposes. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the heel of the references as applied to claims 1, 9 and 17 above out of plastic, as taught by Santisi '284, to make the heel and therefore the entire shoe lighter in weight.

4. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Evins Des. 217,217 (Evins '217). The

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references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the dimensions of the heel. Evins '217 teaches that the bottom portion of the heel can have a first predetermined width and the middle portion of the heel, positioned vertically above the bottom portion, can have a second predetermined width less than that of the first predetermined portion (see Figures 2 and 3). This allows for a better aesthetic appeal as well as allows for a lightening of the heel. Therefore, it would have been obvious to make the heel of the references as applied to claims 1 and 9 above with the middle portion smaller in width than the bottom portion of the heel to allow for the heel to be lighter while still aesthetically pleasing to the eye.

5. Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Wallach 2,470,200. The references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the aperture passing through the heel and extending from one lateral side to the other. Wallach '200 teaches that a heel can have an aperture 31 passing through the heel from one lateral side to the other to aid in holding cylinders such as lipstick (see col. 4, lines 65-73). Therefore, it would have been obvious to place an aperture, such as that taught by Wallach '200, in the heel of the references as applied to claims 1 and 9 above, to allow for a receptacle to hold cylinders such as lipstick, as taught by Wallach '200.

6. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Wasserman 4,697,362. The references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the logo attached to a lateral side of the heel. Wasserman '362 teaches that a logo 3 can be removably attached to the heel area of a shoe in order to provide a visual display for ease of viewing by

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anyone within the proximity of the shown footwear. Therefore, it would have been obvious to place indicia, such as that taught by Wasserman '362, on the heel of the references as applied to claims 1 and 9 above, to provide easy viewing of the visual display by anyone within the proximity of the footwear, as taught by Wasserman '362.

7. Claims 4, 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 3, 11 and 18 above in view of applicants admittance that it is prior art. The references as applied to claims 3, 11 and 18 above disclose all the limitations of the claims except for the fastener being hook and loop material. Because applicant did not argue the Official Notice taken in the previous Office action, it is taken that hook and loop fasteners are an art accepted equivalent fastener for screws, nails, rivets, etc as admitted by the applicant since there is no argument to the contrary. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to use hook and loop fasteners in place of the removable screws N of Lin '543 to removably attach the strap to the insole while preventing bulging due to the fastener.

Response to Arguments

8. Applicant's arguments filed November 15, 2005 have been fully considered but they are not persuasive. Applicant argues that the references applied do not teach the space between the rear portion of the insole and the rear portion of the outsole. This argument was addressed in the rejection set forth above. The space is that portion located behind the outsole 3 and in front of the furthestmost heel portion of insole 1 from the back of the heel to the arch area. The heel 4 substantially fills this space as it is mounted to the shoe insole (see Figure 3, 4 fills the back end

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of 1 where the outsole 3 is not located, i.e. the space). Applicant further argues a substantially high heel, which is not claimed in the claims; therefore this argument does not appear to be directed towards the claimed invention.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

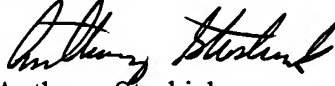
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anthony Stashick
Primary Examiner
Art Unit 3728

ADS